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NO. _____

THE SUPREME COURT OF THE UNITED STATES

TERM _____

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THOMAS M. RETTIG

-VS-

THE KENT CITY SCHOOL DISTRICT, ET AL.

83-6494

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

JURISDICTIONAL STATEMENT

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Pursuant to Rule 15.1.(a), Thomas Matthias Rettig presents the following questions by this appeal to the Supreme Court of the United States:

I was born on May 30, 1965 at St. Luke's Hospital in Shaker Heights, a suburb of Cleveland, Ohio. In the fall of that year, my father accepted a teaching position in the Kent City School District. We have been living in Kent since then because my father never left the employ of my school district. Because I was a handicapped child, my father, when I was five years old in 1970, referred me to the director of child study and special education of my school district.[1] When he refused to enroll me in the class for slow learning children which he had been directing for my school district, was I entitled to a Notice of my federal rights under the Fifth and Twelfth Amendments to the U.S. Constitution? Can this denial of my right to the property of a special education without due process of law be construed as the beginning of my claims under 42 U.S.C.A. 1983? Am I entitled to appropriate compensation for this wrong done to me?

When I was six years old, my mother brought me for an appropriate evaluation and class placement to the Office of Michad Chrin. I was again refused enrollment in the class for slow learning children. Geraldine Irvin, the school psychologist, told my mother to enroll me in a program operated by the Ohio Department of Mental Health and Mental Retardation. However, before I could have been enrolled in this program, Section 3321.05 of the Revised Code of Ohio required that the Kent City School District legally dismiss me from attendance in my school district of residence in order to make me eligible for placement in the program for the trainable retarded in my county. Is this de-facto ex-

[1]Section 3323.01 CLASSES AND TRAINING OF TEACHERS FOR THE HANDICAPPED
The state board of education may grant permission to any board of education to establish and maintain classes for the instruction of deaf or blind persons over the age of three, and physically, emotionally, or mentally handicapped persons over the age of five; and to establish and maintain child study, counseling, adjustment, and special instructional services, including home instruction, for persons over the age of five whose learning is retarded, interrupted, or impaired by physical, emotional, or mental handicaps. The state board of education may, by written agreement with the board of trustees of any college or university, arrange with the teacher education department of such college or university for the classroom and in-service training of teachers for handicapped children.

clusion of me a continued violation of my rights under the Constitution and under 42 U.S.C.A. 1983?

My mother enrolled me in a nursery school at Akron University when I was excluded without due process and equal protection at the time I had reached the age of six years and three months.[3] She testified that this placement was not appropriate for a six-year-old. My school district administrators claim they did not legally exclude me because my mother chose the nursery school. Without the legal exclusion, my mother could not enroll me anywhere other than in a private nursery school. This left me in an impossible situation: My parents were permitted by the Ohio General Assembly to provide a private placement for me.[4] Yet they could not place me into a private school that met the Standards of my StateBoard of Education. I received no appropriate special education during school year 1971-72, neither public nor private. Am I entitled to compensatory education from my school district for this school year?

In May 1972, I turned seven years of age. At this time, Michael Chrin, Director of Child Study and Special Education requested "a comprehensive medical evaluation" of the Metropolitan General Hospital in Cleveland so that I could be considered by him

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[3] Section 3321.07. REQUIREMENTS FOR CHILD NOT ATTENDING PUBLIC SCHOOLS. If any child attends upon instruction elsewhere than in a public school, such instruction shall be in a school which conforms to the minimum standards prescribed by the state board of education. The hours and term of attendance exacted shall be equivalent to the hours and term of attendance required of children in the public schools of the district...

MINIMUM STANDARDS FOR OHIO ELEMENTARY SCHOOLS, State of Ohio, Department of Education, Columbus, Ohio. Revised 1970. Standard EDb-401-01 provides for the statutory requirements of the Ohio Revised Code, 3313.48- Minimum School Day five hours of the noon recess. Ohio Revised Code, 3317.01B - Length of the School Year — The school shall be open for instruction at least 180 days unless this requirement is waived by the State Superintendent of Public Instruction. (Trimester and quarter exceptions are cited.)

Section 3313.64 FREE SCHOOLING FOR RESIDENTS; TUITION FOR NON RESIDENTS. The schools of each city, exempted village, or local school district shall be free to all school residents between five and twenty-one years of age,...

Section 3313.641. SUMMER SCHOOLS, ADULT CLASSES, AND POSTGRADUATE INSTRUCTION Notwithstanding the provisions of Sections 3313.48 and 3313.64 of the R.C. the board of education of a city, exempted village, or local school district may organize and operate a summer school, an evening or day school for adults and out-of-school youth, or technical school or institute for instruction beyond the high school.... which may be open to any pupil irrespective of his age upon such terms and upon payment of such tuition as the board prescribes.

1958 OAG 3060. A board of education may not charge tuition against pupils between six and twenty-one years of age for attendance at special schools, or for materials used or consumed in the schools...

[4] Section 3321.04 COMPULSORY ATTENDANCE. Every parent, ... having charge of any child of compulsory school age ... who has not been determined to be incapable of profiting substantially by further instruction, must send such child to a school which conforms to the minimum standards prescribed by the state board of education, for the full time the school attended is in session, which shall not be for less than thirty-two weeks per school year....

"for placement into one of our special education classes for the 1972-73 school year." (Board of Education Exhibit BB; Administrative HearingRecord.) I was hospitalized at this hospital on July 10, 1972 and released on the 14th. The hospital's discharge diagnosis of me was "Mental Retardation and Hyperactivity." I "was evaluated by Mrs. Tinker (Senior Psychologist/Pediatric Psych) and found to have an I.Q. of about 56." (Board of Education Exhibit HHH, page 10.) The "Psychologist ofKent Public Schools" was provided a copy of my Discharge Diagnosis. (HHH, page 12.) While my parents were not sent a copy until March of 1974 (HHH, page 1), my father testified at the local hearing that he and Michael Chrin discussed the copy the school had received from the hospital (Independent Hearing Officer's Hearing, April 3, 1979, p. 152 ff.) prior to my second hospitalization at this hospital.

As stated above, my father testified that he sought to find out my diagnosis from the hospital, but did not receive a copy until March 1974. He testified that he asked Michael Chrin to provide him the information; he refused. "Mr. Chrin said, 'I cannot give you that information; that is privileged information and if I give you that, that means that they will not honor this again and I will receive no more information from the hospital.' That is what he said." (Matthias Rettig, Independent Hearing Officer's Hearing April 3, 1979, pp. 154 and 155; (Administrative Record).

Given the opportunity to rebut this testimony, the Kent City School never availed itself thereof. Independent Hearing Officer Freed, in his final decision states that no medical evaluation was performed and none was legally required. Decision of David P. Freed, April 30, 1979, p. 17:

> "With regard to the medical evaluation, the hearing officer specifically determines that at the time of placement of Tom Rettig there was no publicly financed medical evaluation made of this child and that the District was not required to make any such evaluation."

And again, at p. 24:

> "In conclusion, the hearing officer finds no violation of law with respect to the evaluation and testing procedures utilized by the District in connection with the development of a free and appropriate educational program for Tommy."

Further, at page 42:

> "On each of the issues presented herein, the hearing officer has found that the Kent City School District has met its burden in proving by a preponderance of the evidence that it is providing a free and appropriate

public education for Tommy Rettig."

The final decision of this Hearing Officer was appealed by my mother. The Superintendent of Public Instruction appointed a Referee to

> "review the record of said matter, take additional evidence if deemed appropriate, pursuant to law, and issue a report and recommendation thereon to the State Board of Education."

Report of Referee, September 28, 1979, p. 2.

He further reports, on pages 2 and 3:

> "Although represented by counsel at the IHO hearing, the parents elected to prosecute their appeal to the State Board without the assistance of counsel. On July 20, 1979, Mrs. Rettig submitted a 65-page brief to the Referee in support of the parent's appeal. In that brief, the parents ask the State Board to consider issues which were not raised by either party at the IHO hearing and to compel the production of evidence with respect thereto. In addition, they take exception to the manner in which the pre-hearing disclosure conference and the hearing were conducted by the IHO."
>
> "A responsive brief was filed on behalf of the school district on July 27, 1979..."
>
> "On August 2, 1979, Mrs. Rettig filed an emotional, fourteen-page letter addressed jointly to superintendent Cardinal and the Referee.... Mrs. Rettig states that copies of this letter were sent directly to the members of the State Board."
>
> "The record on appeal consists of the verbatim transcript of the IHO hearing (14 volumes totaling 2,610 pages), Rettig Exhibits 1-67 inclusive, Board of Education Exhibits A-Z, AA-ZZ and AAA-HHH, all inclusive, and Hearing Officer Exhibits 1 and 2. The parents' request to add to this record is dealt with later in this report."

Further, on page 5,

> "An additional issue which the parents seek to raise for the first time upon this appeal is whether the Kent City School District has been in full compliance with the standards relating to special education for handicapped children from 1970 to the present time. With respect to that issue, the parents request the State Board to compel the production of the following documents and additional evidence:" (see pp. 5, 6, 7.)

And the footnote on page 7,

> "As noted previously, the parents and the school district were represented by counsel prior to and throughout the IHO hearing. Therefore, it may be presumed that their agreement as to the issues was made with full knowledge of its legal effect."

My parents had to sign a waiver of their right to a due process hearing before Independent Hearing Officer Freed permitted the hearing which he conducted in behalf of the Ohio State Board of Education to come about. See Hearing Officer Exhibit 1. My parents were not permitted to participate in the disclosure conference. The attorneys decided upon the exhibits.

My parents were witnesses only. My attorney agreed with the other two attorneys to a proof by the preponderance of the evidence rather than in strict compliance with the Administrative Code of Ohio as in effect since 1970.

Referee Clark reports on page 8:

> "The Referee believes that the record is substantially complete as to the stipulated issues and that additional evidence is not necessary to a proper review thereof by the State Board. For that reason the Referee has elected not to convene a Chapter 119 hearing for the purpose of receiving the additional evidence discussed above."

His findings of fact and Conclusions of Law are found on pp.9,10:

> "... the Referee finds himself in total agreement with the findings and conclusions of the IHO, as set forth in his written decision of April 30, 1979. Accordingly, the decision of the IHO is incorporated in this report as if fully rewritten herein.
> The Referee specifically adopts as his own the findings of fact and conclusions of law of the IHO with respect to each issue set forth in Hearing Officer Exhibit 2. (See Decision of Impartial Hearing Officer, pp.14-42)."

His Recommendation to the State Board of Education is found on page 11:

> "...the KentCity School District has met its burden of proving by a preponderance of the evidence that it is providing a free and appropriate public education for Thomas M. Rettig."

My parents appealed to the State Board of Education directly by filing objections to report of referee. The State Board of Education instructed the Superintendent of Public Instruction to review the 201-page brief, and to prepare a report.

> "The brief details the deep concerns that Mrs. Rettig has had and now has in relation to the provision of an appropriate education for Thomas."
>
> "The review of the brief was in two phases:
> 1. Objections relating to the issues presented at the impartial due process hearing.
> 2. Objections going beyond stipulated issues."
>
> "There is no new evidence presented in Mrs. Rettig's objections relative to the stipulated issues."
>
> "The following issues raised in Mrs. Rettig's objections are outside the scope of issues stipulated at the impartial due process hearing."
>
> "While the State Board is not legally obligated to review issues outside of those stipulated, the following additional issues are presented in the interest of fairness to Mrs. Rettig's position to you for your consideration." (pp.3-5.)
>
> "Failure to notify the parents prior to administration of tests.
> Department comment: There is no way to verify the truth of the allegation. There is no indication of when these alleged violations occurred, it may have been before the effective date of House Bill 455 and P.L. 94-142."

This is completely unfair to me; is it not? See Rettig Exh.47 dated 6/77 wherein Michael Chrin became my school psychologist and provided for his unqualified classification of me. He did not inform my parents before he subjected me to this evaluation. Should he not have according to law?[5] Is this action by Michael Chrin in behalf of the Kent City School District and upheld by the Superintendent of Public Instruction not only a constitutional violation of my rights to due process and equal protection, and my statutory right under 42 U.S.C.A.1983, but also a violation of P.L.93-112 and P.L.93-380 and P.L.94-142 vis-a-vis me? [6] If my parents were not told about the tactic evidenced in Rettig Exh.47, how can they protect my rights?

The Superintendent for Public Instruction further tells the State Board of Education, on page 6:

> "There is little merit to the allegation that due process was denied because the decision was rendered by an "independent" rather than an "impartial" hearing officer. This is a distinction without a difference. Assuming that the hearing had indeed been held pursuant to R.C. 3323.04, would a denial of due process have resulted? No, R.C. 3323.04 states that all hearings held under R.C.3323.04 shall be held in accordance with procedures set forth in R.C. 3323.05."[7]

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[5] Amended Substitute House Bill No. 455 took effect August 27, 1976. A copy of this Ohio Statute is contained in the Administrative Record. It is codified as chapter 3323 in the Revised Code of Ohio.

The Ohio State Board of Education adopted Standards for Due Process and Procedural safeguards for Handicapped Children and Youth effective August 28,1976. It is contained in the Administrative Record as Rettig Exhibit 52. The Administrative Code is EDb-21-27. Section (B)Prior Notice (2)Evaluation states:

> "Prior to the initiation of any evaluation activities, parents shall be notified of the intent to identify and formally evaluate any child suspected of needing a special education program or related services. Such notice shall include, but not be limited to:
> a. a request for written permission to evaluate the child. Written permission must be obtained before any evaluation activities are initiated;
> b.a statement of the right to refuse permission for the evaluation with the understanding that the school district can then request an impartial due process hearing;
> c.a statement that should no response be received to the request for permission to evaluate within 30 days of receipt of the notice, the school district may proceed with the evaluation.
> d. reasons the evaluation has been requested and the name of the person(s) who initiated the process;
> e. through n.....

P.L.93-112 took effect in 1973 and in 1974 Congress amended the definition. Rules and Regulations took effect on June 3, 1977.
P.L.93-380 took effect in 1974 and P.L.94-142 took effect in 1975. The Rules and Regulations implementing both statutes took effect October 1, 1977.
All of the above require prior notice.

[7] Section 3323.04 R.C.O.: ...If an agency directly affected by a placement decision objects to such decision, an independent hearing officer, appointed by the school district and the objecting agency....shall conduct a hearing to review the placement decision...The decision of the hearing officer shall be final except that any child affected by such decision or his parents may present a complaint in accordance with Section 3323.05 of the Revised Code."
Section 3323.05 PROCEDURAL SAFEGUARDS (E) When a formal written complaint is received, an opportunity for the aggrieved party to receive a due process hearing conducted by an impartial hearing officer in accordance with standards and

Was I not, in fact, deprived of due process and equal protection by the hearing provided me by the Hearing Officer? Was he not obligated to verify compliance with the Standards for Special Education of the State Board of Education? Instead, he rendered a decision on the preponderance of the evidence which allowed him to ignore any reference to due process regarding my eligibility for an education under Ohio school law which addresses both of the major areas of my disability: retardation and hyperactivity? Is not the State Superintendent of Public Instruction aiding and abetting the Kent City School District? Since the Board of Education of Ohio eventually affirmed the conclusion of its own independent hearing officer David Freed, as recommended by its independent referee William Clark, as passed upon by the State Superintendent of Public Instruction, is it not true that the State of Ohio is in fact aiding and abetting the KentCity School District in its violations of my rights as a handicapped citizen? Don't I have a constitutional tort against my school district and my State? Are they not all violating my statutory right under the public laws cited in footnote 5? Do these federal statutes require a diagnosis or medical evaluation to assure for me that I am not misclassified as being unable to learn the skills I need in order for me to live without caretakers in an institution? Under these statutes, is it not paramount that an appropriate pre-placement evaluation be made of me; and that I be re-evaluated when my teacher or parent request it, and when the school district needs appropriate evaluation to design and implement my individualized education plan?

Judge Aldrich had received this record of the administrative miscarriage of my rights. Should she not have ordered a multi-factored evaluation to be performed on me at the time I requested of her to provide a preliminary injunction against Kent, Ohio? From my perspective, she, too aided and abetted the perpetrators. Did the District Court commit a legal error when it refused to intervene in my behalf at the TRO hearing in August 1980?

PROCEDURES adopted by the state board of education....
A Party to a hearing under this division shall be accorded:(1) The right to be accompanied and advised by counsel and by individuals with special knowledge... (2)The right to present evidence and confront, cross-examine, and compel...

When she tried the case on the merits, Judge Aldrich refused to intervene in my behalf other than to order a multi-factored evaluation of me and some extra-curricular activities at a minimum of one hour per week. Is the information in the administrative record and the testimony and evaluation provided to the District Court in August 1980 and in May 1981 not sufficient to satisfy my eligibility for year-round programming which must include systematic instruction of self-help skills for independent living and systematic instruction in on-the-job training to prepare me for living now and in the future without primary caretakers? And without prospective life-long sheltered activity center placement with people who are mentally retarded? Am I not entitled to learn systematically to adapt my behavior which makes learning so very hard for me?

The District Court, for whatever reason, apparently ignored the wealth of documentation provided in my behalf. The Sixth Circuit Court of Appeals not only upheld the lower Court, it vacated the part of the District Court Order to provide me with a minimum of one hour of extra-curricular activities to permit me to learn to socialize with some peers. On remand, the District Court upheld its original Order of this issue. This Order has been appealed by the Kent City School District for the second time to the Sixth Circuit under the Education for All Handicapped Children Act of 1975. Does this statute not require dissatisfaction of a party at the state level review in order to entertain a complaint/appeal in the federal courts? Certainly, neither the Kent City School District, nor the State of Ohio were aggrieved by the state level review! Both my mother and I cross-appealed the second round of the Order of Judge Aldrich. The matter is pending in Cincinnati. Is the disposition by the Sixth Circuit of my complaint affording me the rights guaranteed me by my State and by my Nation? (In terms of the Constitution; 42 U.S.C.A. 1983; P.L. 93-112; P.L.93-380; P.L.94-142?) Did the Appeals Court commit any error(s)? Should my parents not have been notified prior to the administration of the so-called group assessment by Michael Chrin when he singled me out and performed that so-called multi-factored evaluation of me? If he can get away with violating the due

process rights of not only me but of all of my handicapped peers, why should he have to bother to provide notice to my parents at any time? Is it not most likely true that this tactic documented in Rettig Exhibit 47 in June of 1977 was in fact done in order to "prove" to the State Department of Education and, in turn, to Washington, that Kent (and Ohio) were complying with the regulations implementing both federal statutes under discussion here? Thomas Rettig needs nothing in the way of related services other than what the state operated/administered program for children who are classified trainable need. Or do I? Or did I? Am I entitled to several years of compensatory education?

My parents objected to procedures and instruments used that resulted in the so-called compliance by the District with the Order of Judge Aldrich. The District ignored my parents. My parents asked Judge Aldrich to intervene. She refused on two occasions. She ordered my parents to exhaust administrative remedies again. Even though the complaint against my teacher and school were based upon Section 504 (P.L.93-112). Does P.L.93-112 require exhaustion of administrative remedies? Judge Aldrich also said she did not receive a complaint. My mother incorporated the complaint in the Memorandum in support of her Motion for Preliminary Injunction which she filed as a related case in District Court in 1982. Did this error by the District Court provide me with my rights?

My mother again requested a due process hearing of the Kent City School District to challenge the evaluation the District conducted on me. The Hearing Officer, Mary Lents, dismissed this request for due process hearing because my mother supposedly did not provide sufficient specifics. We never had an opportunity to challenge the Court-ordered multi-factored evaluation before the Hearing Officer. We never were provided the documents which the Kent City School District is mandated under State and Federal statutes to prepare and implement in my behalf.[8] The State Board of Education upheld the District's contention that no meeting of the placement commit-

[8] Effective April 25, 1977, Section 3301-51-18 STANDARDS FOR MULTI-FACTORED EVALUATION, LEAST RESTRICTIVE PLACEMENT AND INDIVIDUALIZED EDUCATIONAL PLAN (C) Multi-Factored Evaluation (Subparagraphs, 14 in total); and (D) Placement Conference requiring a written report verifying compliance with all mandates on least restrictive alternative and individualized educational plan. While the District may refuse participation by the parents in this required placement committee conference, the district is required by Ohio statute to implement for Thomas Rettig the entire subparagraph (D) because it details the specifics of the components of educational services required for the student before the IEP can be developed together with the parents.

tee was required for me. The State Board refused to invoke its powers in my behalf to provide the documents to me or to my parents. Without the documents, we were unable to specify the issues in the first place. The State Board refused to convene a chapter 119 Hearing (Admin. Code of Ohio) in order to receive the evidence. Do these actions not in fact constitute a continuation of the denial of my right to a free appropriate public education under both P.L. 93-112 (Section 504), and under P.L. 94-142? Are these actions not clear violations of my Constitutional rights as well? A new law suit is presently pending before Judge Lambros in Cleveland... The District has chosen for me a much more restrictive alternative during the course of this compounded litigation. I am no longer receiving instruction in art with non-handicapped peers, for example. This constitutes a change from the time of the local hearing. Should I not be receiving art with non-handicapped peers as I did when the District made its case before the hearing officer back in 1979? I understand that my parents never agreed with the District nor with the State that I should be removed from daily contact with my non-handicapped peers, as was the case in 1979: I spent a period of time with a regular fourth grade class, on a daily basis; and I also had instruction in art, physical education, and music with my non-handicapped peers several times a week. I could be on my required diet because I was able to walk back and forth from home to school for lunch. The high school is too far for me to walk home for lunch. The District never ever considered, in my so-called individualized education plan which it keeps forcing upon me, my need to learn to prepare the meals required by my diet as prescribed by my personal physician, Dr. Theron Randolph, clinical allergist, of Chicago, Illinois.
The questions I have in this regard are the following: Has the District violated my right to placement in the least restrictive alternative under both State and Federal statutes by taking away the opportunities cited above?[9] Should my individualized educational plan address my dietery need? And, should I be taught, on a daily basis, how to prepare the meals I need to stay on the diet?

[9] 20 U.S.C.1415(e)(3)During the pendency of any proceedings conducted pursuant to this section, unless the State or local educational agency and the parents or guardian otherwise agree, the child shall remain in the then current educational placement of such child,...

My mother explained to me that I would not be learning to maintain myself on this diet if she continued to prepare my meals for me. And, if she brings the meals to me to school daily, as she did during the school years 1975-76, 1976-77, 1977-78 (when my class was housed at the University), then I have no opportunity at all to be with my non-handicapped peers at my high school. Dr. Randolph still deems a diversified rotatary diet necessary for me to help me learn. Is it the responsibility of my mother to continue me on the diet? I have an apartment for which I pay, in part, with the money I receive from supplemental security income. I have asked for a teacher to instruct me in this apartment, but the District keeps refusing me a teacher. My parents considered hiring a teacher. In August of last summer, while on a bikeride with my private tutor -neither the District, nor the State of Ohio provided any instruction to me whatsoever the last several summers - I withdrew to a swampy area off the bike trail near the Cuyahoga River. I was missing for a period of twenty-three hours before a helicopter of the Ohio National Guard spotted my bike and alerted the police who had been conducting an intensive search for me. Now my parents are unable to find a qualified tutor for me. My mother or father spend time with me in my apartment; but I am not doing for myself what needs to be done. My mother bathes me; she cooks for me; she washes my clothes; she shops for me. I have not been taught anything I can apply to help with chores. I have no peer friends. My school provides me no extra-curricular activities whatsoever. These are always on appeal in some court. Whatever happened to implementation of the equal opportunity goal promised for me in P.L.93-380 and P.L. 93-112? Am I not entitled to extra-curricular services with either the non-handicapped or with the handicapped depending on the required multi-factored evaluation as the basis for the determination?[10]

[10] Congress enacted, in 1970, P.L.91-230. Section 613 of Part B-ASSISTANCE TO THE STATES FOR THE EDUCATION OF HANDICAPPED CHILDREN required of the State of Ohio a plan setting forth "policies and procedures as will provide satisfactory assurance that funds paid to the State under this part will be expended ... solely to initiate, expand, or improve programs and projects... (1)which are designed to meet the special educational and related needs of handicapped children throughout the State... In 1974, Congress amended P.L.91-230. The new amendment contained in P.L.93-380 is found at 20 U.S.C.1413 and note: "Section 613(a) of such act is further amended by ...(3)by adding...(12)(A) ESTABLISH A GOAL OF PROVIDING FULL EDUCATIONAL OPPORTUNITIES TO ALL HANDICAPPED CHILDREN,... (13)(A)(1)PRIOR NOTICE TO PARENTS..., (B) PROCEDURES TO INSURE THAT HANDICAPPED CHILDREN ... ARE EDUCATED WITH CHILDREN WHO ARE NOT HANDICAPPED AND (C) PROCEDURES TO ENSURE THE TESTING AND EVALUATION MATERIALS AND PROCEDURES UTILIZED FOR THE PURPOSES OF CLASSIFICATION AND PLACEMENT OF HANDI-

The federal Courts have told me that the EHA and EAHCA did not require year-round instruction per se. I understand and accept that. However, in my case on appeal with the Supreme Court, have I not demonstrated that my District did not perform any pre-placement evaluation of me as required under Ohio school law? The District claims it never received a response from the Cleveland Metropolitan Hospital to its request for a comprehensive medical evaluation and diagnosis of me. My father testified that he and Michael Chrin discussed this matter, but that my father never saw a copy of it until March 1974. I have already asked this Court questions concerning the effect my behavior of withdrawal from the teaching and learning environment and from people have and whether those should be included in my individualized educational plan to help me learn in spite of them. I have also addressed my concerns for providing, and teaching me, the dietary regimen I need to help me learn. Does the comprehensive record on appeal here not demonstrate my need for year-round programming? Does this record not demonstrate my need for occupational instruction beyond an evaluation which is all the District has done for me in occupational therapy? The so-called IEP for 1977-78 contains, in the handwriting of Michael Chrin, a need of mine to be met by occupational therapy. Except for an initial attempt by my teacher in the fall of 1977 to do something according to the directives of Children's Hospital of Akron's occupational therapist -HER TESTIMONY IS CONTAINED IN THE ADMINISTRATIVE RECORD in Hearing of Feb.21, 1979, pp. 131 ff. and Hearing of Feb.23, 1979 beginning on page 5; also the related exhibits: Rettig Exhibit 59 OCCUPATIONAL THERAPY EVALUATION of me, (10-27-77); Rettig Exh. 61 OCCUPATIONAL THERAPY SCHOOL VISIT with my teacher on 11-21-77 and the therapist from Children's Hospital who did the evaluation a month earlier, and Rettig Exhibit 60 dated 12-29-77 relative to my OCCUPATIONAL THERAPY FOLLOW-UP VISIT indicating that there was no working relationship between my teacher and the therapist who prescribed the therapy for me. The promise of occupational therapy was the reason my father signed the IEP for 1977-78. However, it was only a promise. No service for me was actually provided.

See page 17 of Hearing of Feb. 23, 1979. See also page 30 in response to Dennis Whalen's cross-examination of this therapist as to whether a teacher could implement an occupational therapy program that was specifically designed for me, she testified:

> "By that I mean that in this particular instance, I am a person who works for Children's Hospital and I don't have, you know, any -- I can't come over here to the Kent Public Schools any time I think Sue Taylor would need some help. I have to be invited here, and I can't rally say that she is working under my supervision if I don't have the ability to monitor what she is doing."

Continuing on page 31:

> "...Sue Taylor and I agreed on the way in which this would be followed up, but there was never any followup...."

She testified that she had a follow-up conversation with Michael Chrin in the spring of 1978 (page 47) concerning the provision of occupational services for me. "What was your answer to Mr. Chrin's question about whether or not OT could be provided to the Kent Public Schools from Children's Hosptial?"

"What was my answer? That, yes, we could provide that."

Question: "Did Mr. Chrin ever contact you again concerning employing Children's Hospital for occupational therapy?"

Answer of Witness: "No."

Yet my individualized education plan which my father had signed specifically called for these services to be performed by this very therapist of Children's Hospital. Based upon these facts, Should not my IEP for school year 1978-79 have included occupational therapy? The hearing officer apparently deemed the concern moot because at the time of the local hearing in 1979, the District employed a part-time occupational therapist who had time to evaluate me; however, she did not provide any occupational therapy for me. The so-called IEPs which the District developed for me for school years 79-80 and 80-81 do not provide for any occupational therapy for me either. They all are in the record. The District Court found the issue moot, and the 6th Circuit Court upheld her. To me no issue is moot, including occupational therapy. I expect compensation for the wrong done to me. Am I entitled compensatory occupational therapy?

The Hearing Officer determined that my teacher was qualified to teach me on a day-to-day basis. He also determined that she was qualified to evaluate my specific needs apparently regarding the scope of related services for the 1978-79 IEPP, since no evaluation

was done and, in his opinion, none was required. I must and hereby do ask this Highest Court in my country: Was my teacher Sue Taylor qualified to make those decisions? My diagnosis since 1972 has been educable mental retardation and hyperactivity. In 1974, my parents took me to the Judevine Center for Autistic Children in St. Louis, Missouri. There are several exhibits relevant to this fact in the Administrative Record, as is the testimony of two professionals from this specialized field who evaluated and treated me at St. Louis in 1974 and came to Kent to my home just prior to the commencement of the local hearing in January 1979 when they did another psycho-educational evaluation of me. They diagnosed me as having had infantile autism since birth. They based their diagnosis on two periods of my childhood: The evaluation they did of me in 1974, and the questionnaires my mother had to fill out to evaluate the years prior to 1974, going all the way back to infancy. My mother testified for about thirteen hours as my witness before Hearing Officer Freed to provide opportunities to cross-examine her actions in my behalf. In January 1979, these two staff (their qualifications are in the Administrative Record) determined that I still had autism, among other specific types of programming for me.

The Rules and Regulations implementing Part B of the Education of the Handicapped Act, 45 C.F.R.121a.5 provides the following definitions:

> (a) As used in this part, the term "handicapped children" means those children evaluated in accordance with 121a.530-121a.534 as being ....seriously emotionally disturbed,... other health impaired,... mentally retarded, ... multi-handicapped... who, because of those impairments need special education and related services.
>
> (b) The terms used in this definition are defined as follows:
> (8) "Seriously emotionally disturbed" is defined as follows:
> (ii) The term includes children who are ~~[illegible]~~ autistic.

Autism is my primary handicapping condition. It has not been properly addressed in my so-called individualized educational program plans because there was never any provision made to address what the various experts who knew me personally and who testified for me, considered, in their qualified professional opinions, to be necessary components of related services to be included in my individualized education plan.

None of my teachers were qualified to evaluate my needs; they

were not qualified to teach me either: 121a.12 defines "Qualified"

> As used in this part, the term "qualified" means that a person has met State educational agency approved or recognized certification, licensing, registration, or other comperable requirements which apply to the area in which he or she is providing special education or related services.

The Ohio General Assembly addresses teachers' qualifications. 3323.11 R.C.O. states "Teachers in education programs under this chapter shall possess the usual qualifications required of special education teachers in the public schools."

To me, as a student with autism, my severe behavioral handicaps of withdrawing from teachers and other people, and my withdrawing from situations in my learning environment, constitute a foremost need to address the specific severe behavioral handicaps in an individualized educational plan that will reasonably calculate the types and degrees of specilized services I need in order to avoid institutionalization as an adult.

The State Board of Education has promulgated Standards for Special Education to implement 3323.011 R.C.O. In 1974, Michael Chrin placed me into a class for severely and/or multiply impaired children. This is EDb-215-04 and is contained in the Record which admitted various exhibits before Judge Aldrich in Cleveland. The State of Ohio introduced it at that time as State Exhibit E. Page 22, in its descriptive title of EDb-215-04 PROGRAM STANDARDS FOR CHILDREN WITH SEVERE AND/OR MULTIPLE IMPAIRMENTS readily indicates to a careful reviewer of State Exhibit E that the important word "UNITS" is completely absent. For a comparison, please see page 4, for example: EDb-215-01 Program Standards for Special Education UNITS for Hearing Impaired Children; see page 10: EDb-215-02 Program Standards for Special Education UNITS for Crippled Children; see page 24: EDb-215-05 Program Standards for Special Education UNITS for Learning and Behavioral Disabilities; see page 29: EDb-215-06 Program Standards for Special Education UNITS for Children with Severe Behavioral Handicaps (Emotionally Disturbed). As the Hearing Officer and every agency after him,-since they all upheld him- determined that no diagnosis was done on me which was used as the basis for my education and related services by the District, and no appropriate evaluation exists from the District, the Record of expert testimony and exhibits in the Record for me

must become the basis which this Court should use in trying my plea for compensatory education.

As stated above, the federal regulations clearly require that my severe behavioral handicaps be evaluated by qualified professionals. As further stated, EDb-215-04 is not a UNIT of students who have homogenious needs. we are all differently impaired. The identification of the differentiated impairments impacting upon me is what is critical. This, the school has never done for me. A teacher, to be qualified according to EDb-215-06 requires State Board of Education Certification in this language: (I) Qualifications (on page 33 of StateDefendants Exhibit B):

1. The teacher shall meet all the requirements for a certificate as established by the State Board of Education for this area of specialization.

2. The supervisor of programs for children with severe behavioral handicaps shall meet the following qualifications:

   a. Hold certification as a teacher of Learning and Behavioral Disabilities.
   b. Hold a supervisory certificate.
   c. Show evidence of at least three years' teaching experience in approved classes for Learning and Behavioral Disabilities

3. Teacher Aides andVolunteers
   a. Units may utilize the services of aides possessing a valid educational aide permit as defined in Section 3319.088 of the Revised Code.
   b. The school district shall have written policies and procedures outlining:
      (2) A planned sequence of continuing education.
      (3) The process for direct continuing supervision and evaluation of the services of such personnel.
      (4) Job description of the role and function and the administrative relationship.

The State of Ohio Board of Education does not certify teachers in the handicapping area of emotional disturbance. It does not certify teachers in autism. It does not certify teachers in multi-handicapped areas. Even if my teachers had been qualified to be certified to teach me, their supervisor throughout the years herein being litigated was Michael Chrin. His vita is in the Administrative Record as Board Exhibit AA. He was never certified to teach any kind of handicapped child. The only qualifications he has are those of a school psychologist to separate school-aged kids into handicapped and non-handicapped. He has no further expertese. Since he has been the Kent Director of Special Education and Child Study since 1968, he has absolutely no business acting as my school psycholgist, even if he ever had been a child psycho-

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logist - as Judge Aldrich erroneously cited him to be.

EDb-215-09 PROGRAM STANDARDS FOR SPECIAL EDUCATION UNITS FOR SCHOOL PSYCHOLOGICAL SERVICES (CHILD STUDY) (B) Eligibility provides (see page 46 of State Exhibit E):

1. The population eligible for school psychological services includes all children identified as or thought to be handicapped; children in regular school programs, and their parents; and educational services personnel who need assistance in modifying or implementing instructional strategies.

Have I been eligible for child study from the District?

EDb-215-09 (C) Comprehensive Services to the Educational Program provides: (still page 46)

1. The school district shall have a comprehensive plan for special education approved by the State Board of Education
2. The school psychologist shall be assigned as a staff person and consultant in an advisory and leadership role, and shall not assume authority or responsibility for the operation of the school program.
3. The primary responsibility of the school psychologist shall be the development of a comprehensive program which involves screening to identify students with difficulties; individual diagnosis and remediation; individual and group work; staff development programs for school and related personnel; and strategies for classroom management, instructional methodology and crisis intervention, designed to assist the school in determining appropriate educational options for children.
4. The primary function of the school psychologist shall be the intensive study and planned services to children, teachers and parents based on a differentiated referral system which includes child-study, scheduled parent and teacher conferences, psychological report writing and planning, implementing and monitoring intervention strategies.
7. The school psychologist shall effectively and appropriately utilize child-study techniques, including:
   a. A variety of recognized individual tests of ability.
   b. Individual measures to determine academic performance, social and behavioral adaptability, and perceptual motor problems.
   c. Criterion reference instrumentation, interviewing and observational techniques.
   d. Projective procedures.
8. All comprehensive individual studies shall be accompanied by concise written reports which include identifying data, reason for referral, interpretation of observational and assessment data, planned systems for teaching and reinforcement, specific recommendations for intervention, remediation and follow-up with the child, teacher and/or parent.

Several of my teachers requested child-study services for me after my enrollment by Michael Chrin. However, all of these requests were subsequent to the enactment of Section 3323.05 R.C.O. which provided for the right of my parents to refuse permission for such child-study. My mother kept refusing permission. But my teachers kept asking for the help. Have I not been entitled to the benefit of child-study from my school district? Should not the district have proceeded to a due process hearing in my

behalf? Section 3323.04 R.C.O. provides for the settlement of the dispute between the agencies who are responsible.

I ask that the Supreme Court consider the vast injustices done to me in light of the Standards for Special Education, including the above for Child-Study, when it reviews the Administrative Record and the Judicial Record in my case.

Have my teachers been qualified according to my multiple handicaps since Ohio does not certify teachers as being qualified to teach me who has a diagnosis involving two major areas of disability which require very specific intervention strategies, the two often conflicting. See the testimony of Dr. Donnellen before Judge Aldrich. (Friday, May 8, 1981, pp. 11 ff.)

Was Michael Chrin qualified to supervise my teachers and speech therapist? He never held any type of certificate qualifying him to teach any type of handicapped areas. (See Board Exhibit AA). The State Board of Ohio has two mandates for the supervisor. They are found at EDb-215-06 (H)(3) The supervisor shall be responsible for:

a. Program evaluation for the purpose of identifying program strengths and needs.
b. The development and implementation of strategies to strengthen those areas identified.

Even if Michael Chrin had ever been qualified to supervise my educational program -which he clearly was not- as the administrator of the program, was he not in a big conflict of interest inherent in this role for the District, the provider of services, and me, the consumer of them? See Rettig Exhibit 54 (Admin. Record) wherein he refuses the requests my parents had made for my IEP:

> "As was discussed with you at your son's IEP conference November 21, several sections of your four pages of written requests cannot be added to Thomas' IEP because they are not specific related services to be directly provided for him, therefore, not appropriate or required for inclusion as part of any student's IEP....
>
> I further indicated, as chairman of the IEP review committee, that requests for services that are not currently provided for any Kent City School children or by Ohio special education programs would not be added to any student's IEP..."

See also Rettig Exhibit 53 (Admin.Record) wherein he refuses the requests my parents made for my IEP for 1977-78 (the above was for 78-79):

> "Enclosed is a copy of Thomas' Individualized Educational Plan that was discussed in detail with you at our 11-22-77 conference.
> After studying your eight typed requests given to me after

the conference, I find they cannot be included as part of the IEP because the requests are not statements of Thomas' present levels of performance or annual/short term instructional objectives..."

Do my parents not have a right to be involved in the development of my individualized educational plan? Is it necessarily in my best interest if they acquiesce what Michael Chrin permitted my teachers to include in my IEP? Were not my parents really acting my best interests based upon the qualifications of the decision makers and implementors of those decisions? Yet, the District never filed for a due process hearing in my behalf. How can the District possibly implement the Standards for Special Education regarding my right to due process concerning my elibility and my evaluation, and my placement into individualized educational programs and required related services which have been specifically designed and implemented for my helping me accomplish my goal of learning the specific skills necessary for survival outside an institution? How could it possibly have accomplished this task? The District gave some degree of administrative consideration to the requests my parents made in my behalf. But this is not all that is required; is it? The District has no documentation that justifies denying me year-round schooling because it has no such child-study as the Standards require. The District has no documentation that justifies denying me occupational therapy services as it has been doing. All it has is evaluation that shows I need occupational therapy to learn to manipulate fasteners used on bought clothing: unbuttoning (I can button some large buttons, but not small shirt buttons); I need to learn to manipulate buttons and hooks commonly used on men's trousers. I also need to learn to bathe independently and to dress independently. I need to learn to prepare some very simple meals independently. To name a very few basic things. As far as recreation is concerned, I have a lot of free time but I have not been taught to fill the time with activities that my peers engage in. I have a pet dog but I can't go on walks with her independently. I had learned to walk to and from school independently in the past. But I can't do it now. I depend on my family for all of this. Don't I have the right to receive very systematic instruction in extra-curricular leisure type activities from my District? I have no friend.

In school, I spent most of my day with an aide because my teachers are responsible for the instruction of all of my classmates. Not one of those aides provided even one copy of the educational aide permit as required by the Ohio General Assembly and showing the mandate from the Ohio Board of Education to the school district concerning their utilization has been met:

EDb-215-06 (I)(3) Teacher Aides and Volunteers
(b) The school district shall have written policies and procedures outlining:
(1) Creteria for selection.
(2) A planned sequence of continuing education.
(3) The process for direct continuing supervision and evaluation of the services of such personnel.
(4) Job description of the role and function and the administrative relationship.

The Administrative Record includes the testimony of all of the teachers employed by the District to whom Michael Chrin assigned me. It demonstrates that there were many part-time aides utilized by the District. Given the fact that the District had no child-study done on me, and clearly the District did not accept as basis for my IEP the evaluations my parents had done of me, and given the dire lack of any professional qualifications of my teachers and their supervisor Chrin, and given the fact that none of the number of aides - numbered close to twenty over the years being litigated - met the requirements of the State Board of Education which promulgated the Statute of the Ohio Assembly.- is it not blatantly obvious that Michael Chrin has been acting vis-a-vis me in a most arbitrary and subjective way? Since I am suing him in his official capacity as the administrator charged by my District to implement the mandates of the Ohio State Board of Education, is not the District responsible for his actions and/or inactions? He accepted a position in a conflict of interest situation. He acted as my school psychologist, as my administrator, as the supervisor of my teachers, as the chairman of the placement and review committee which my District is required to convene for me. He did all of this under full knowledge that he lacked the professional and legal qualifications. Yet superintendent Cardinal never required Michael Chrin to provide Cardinal with any copies of the required reports of each and every meeting of the placement and review committee. These have been refused to my parents on several occasions under various guises. Yet Cardinal kept assigning me to Chrin year after year after year without the related services I need.

I have been excluded from school attendance on a defacto basis. I have been receiving supervision as though I were an incapable child lawfully so determined. This is an outrage. I have never been so determined by any person, nor by any agency. Except by Michael Chrin as he does via his infamous group assessments of me and my handicapped peers. He provides no Notice to my parents of his intent to commit the atrocity on a regular basis. Based upon these facts, is my District and/or my State responsible to provide me several years of compensatory education for each and every year I received vegetation services instead of an education designed and implemented and reviewed according to the Standards for Special Education?

As referred to earlier in this statement, the District has not met the legal requirements when it administered the evaluation in response to the Order of Judge Aldrich in 1981. Both the District and the State of Ohio refused my parents the opportunity to openly challenge the so-called document and the qualifications of those responsible for it. For this reason, in part, another law suit is pending in Cleveland at this time. Judge Lambros has postponed a decision on our request for preliminary injunction and TRO because my individualized education plans for the last few years have been tied by the District to the improper evaluation. And Judge Aldrich refused, in 1981 to permit us to add to our complaint of December 13, 1979 the disputed school years 79-80 and 80-81 for which the District had not multi-factored evaluation according to the determination of Judge Aldrich in her Order of August 1981, on appeal here at the Supreme Court. She stated that those IEPs were not properly before the Court based upon her refusal of our request to add them. Should Judge Aldrich not have permitted us to put them before her for determination? However, the District applied with Judge Aldrich on April 9, 1981:

> "MOTION FOR DISCOVERY Now comes the Defendant, Kent City School District, and moves this Court for an Order compelling the Plaintiffs to permit the performance of a "multi-factored" evaluation of the Plaintiff, Thomas Rettig. ... The requested multi-factored evaluation is relevant, material and necessary for the review of the administrative proceedings which have preceded the instant action and consideration of the relief sought by the Plaintiffs."

Judge Aldrich denied the Motion for Discovery. She did order upon the District, however, to conduct such an evaluation in

"strict compliance with 121a.532." She ordered this, in part, because it was part of the relief I had requested through my attorney at the time. She also ordered it because the District did not have a legal evaluation of me. Therefore, is it appropriate to request that the Supreme Court consider the quality of the education forced upon me for those two school years in light of the fact that the District had no multi-factored evaluation which it utilized in the development of any of my so-called IEPPs? In a footnote, Judge Aldrich addresses the evaluation report done by a co-ordinator of the Mid-Eastern-Ohio Regional Resource Center of an evaluation of me in 1976. However, this document is dated 12-3-76 (Board Exhibit S; Administrative Record). App. E D 14 The IEPP which the District concocted for me for that school year is dated 11/12/76 (Rettig Exhibit 44; Administrative Record). My teacher for that school year, Linda Leavitt, on 10-21-76, applied for School Psychologists Services: Evaluation, Consulting and/or Counseling. (Board of Education Exhibit R; Administrative Record). App. E D 12 The same exhibit indicates that her application was processed on November 23, 1976:

> "Concise Description of suspected problem: Reported and observed behavior similar to children that are classified as autistic. Tom is extremely difficult to motivate regarding specific educational activities. His attentive behavior for learning tasks is very short termed and he is easily distracted. School ability, in particular abstract reasoning and short/long term memory, appear to be very limited."
>
> Have school psychological services been provided in the past? Yes
>
> Reasons for Evaluation: Re-assess school ability to help determine optimal learning modalities for maximum success. Tom's present level of school achievement learning strengths and weakness as assessed by a school psychologist are needed to help further plan the most appropriate instructional program."

Based upon this information, the school psychological services referred to above must be those done by Geraldine Irvin in 1971 and/or those done by Michael Chrin in 1970. That might explain the reason that Geraldine Irvin was present at the meeting with my teacher and parents on the day they were provided a copy of the 1976-77 IEPP. My parents refused to sign this application for "Service is to be provided by a certified school psychologist or intern supervised by this person..." (Still Rettig Exhibit R.) Instead, my mother drafted her own "Consent for multi-factored evaluations of Thomas Rettig. (See Board Exhibit GG; Admin.Record)

However, only the psychological part was done which is that of the MEO/SERRC psychologist. Is this not a clear violation of my rights under newly enacted Substitute House Bill 455 which became law as of August 28, 1976 in Ohio? Chapter 3323. Section .05 PROCEDURAL SAFEGUARDS (C):

> Prior written notice to the child's parents of any proposal or refusal to initiate or change the identification, evaluation, or educational placement of the child, including notice of all procedures available under this section. Notice of placement or change of placement shall be made by certified mail.

At the bottom of the application (Board of Education Exhibit R):

> ... my rights in obtaining help for my child have been fully explained to me by the school staff.

No wonder my parents kept refusing these types of requests! Does this constitute due process for me, the handicapped child who is entitled to procedural safeguards in all the decisions which are being made in my behalf since I can't yet make them for myself?

Three professors testified in my behalf before Judge Aldrich. Their testimony and their report regarding their criticism of the so-called IEPs which the District provided for me are contained in the Record. It was their opinion that the education provided to me, as reported in those "documents" of the District's, was highly inappropriate for my dual diagnosis. They considered the "IEPPs" for 1979-80 and 1980-81 as inappropriate as the earlier ones which Judge Aldrich considered "properly before the Court."

Based upon this state of affairs, to wit: the District applied for an Order upon my parents to give permission to evaluate me in 1981, and upon the Court's finding no multi-factored evaluation exhisted - as corrected by me as to the error of the Court, above- and the professional opinions of those Court-qualified experts of my "IEPPs", am I eligible for compensatory education from my District and State for school years 79-80 and 80-81? This is important in light of the fact that the new related law suit picks up with the Court-Ordered evaluation which my mother and I intend to challenge, leaving those two school years unaccounted for. If these two years may not be considered by the Supreme Court at this time, then we will have to amend our complaint in Cleveland to include them. We are not willing to give them up. I cannot afford to do it because I am still too dependent on my parents or someone who might have to take their place.

meant to include the Ohio Statutes and Standards as effective in the time intervals relative to this litigation.

1. Did the nursery school education I received in 1971-72 comport with the requirements of Ohio Revised Code 3321.07? Or should I have been placed according to Standards EDb-215-07, 09, 13? The records are located in App.V(D); the Ohio Statutes and Standards are in App.V(A).

We attempted, unsuccessfully, to raise these issues at the time of the State Level Review in 1979. 42 USC 1983; Constitutional provisions, App.V(A).

2. Did the Kent City School District afford me my federal rights when Michael Chrin placed me, in 1974, without the benefit of a multi-factored assessment procedure by a qualified psychologist? Did it afford me my federal rights in not re-evaluating me at all until 1976? Did the "education" I received during the years 74-76 meet the requirements of the State Standards as determined by the needs indicated in the comprehensive evaluations done at Cleveland Metropolitan Hospital in 1972 and 1974? Based upon those evaluations, was I eligible for the opportunities provided in Standard EDb-215-06? Did the "behavior modification" I received at the hands of the Kent City School District meet the requirements of 06? Is there, in fact, a plan specifically developed in my behalf to address motivation and withdrawal and other adaptive behavior which adversely affects my ability to learn? We attempted, unsuccessfully, to address this issue at the time of the State Level Review in 1979. See App.V(B).

3. In 1976, my teacher signed an application requesting the services of a school psychologist for me. The Ohio General Assembly had just enacted new due process legislation (O.R.C. 3323.05. My mother gave her permission to Michael Chrin for an inter-disciplinary multi-factored evaluation which was to include occupational therapy and physical education according to the prescriptive recommendations of qualified professionals. Michael Chrin chose to afford me only the services of the school psychologist. He did not convene the required placement committee conference according to EDb-215-17 - there is no such report in

the files. No certified letter was sent to my parents as required by this Standard. How were my parents to know that the evaluation was never completed? How can my parents protect my rights without constant intrusions into the realm of the sanctuary and domain of school bosses? Dr. Robinson has specific recommendations in his report concerning motivation and close structure and positive reinforcement. How were his recommendations implemented when my class was taken with me on numerous field trips? When my teacher implemented an intervention strategy which was purely negative: she "timed me out" for non-compliance with her requests? Did this action and inaction violate any of my federal rights? Some of the documents are located in App.V(D); others are in the record on appeal from the local hearing. O.R.C. 3323.05 and .08 are in App.V(A).
We attempted, unsuccessfully, to raise this issue at the time of the State Level Review in 1979. App.V(B).

4. In June 1977, Michael Chrin subjected me to a "group assessment." He did not tell my parents about it; nor did he provide them written Notice. Are they entitled to prior notice in order to enable them to protect my federal rights? The school and the state contend that the action was acceptable because the results were applied in a very specific way. My question is, How does anyone examining my file to verify compliance with the quirements of school law, and other law, of the actions and inactions of school officials responsible for my education, know what probative value such documents have? Why should Michael Chrin ever provide notice when he can accomplish his goal of deciding how to proceed to my detriment by violating not only my federal rights, but also those of my handicapped peers? Without notice provided my parents, how are they able to have misleading information amended or destroyed? What about the Buckley Amendment which is provided for in the Standards for due process and procedural safeguards, EDb-215-17? We attempted, unsuccessfully, to raise this issue at the time of the State Level Review in 79. Judge Aldrich upheld the District and the State because the results, according to self-serving testimony, were not used for educational decisions in my behalf. The law must be on my side.

5. In 1975, a clinical allergist, Dr. Theron Randolph in Chicago, determined that I had multiple food allergies, etc. that affected my adaptive behavior. Should this medical evaluation be reflected in the educational plan developed, implemented, and evaluated for me? Standard 3301-51-18 (C). R.C.O. 3323.1 (the definitions used in both chapters 3323. and 3321.); 3323.08. These are found in App.V(A). App.V(A) also contains the CARC v. ESSEX law suit wherein chapters 3323. and 3321. were upheld as not being repugnant to the Constitution and other federal laws. This suit is cited by Judge Aldrich whose decisions in this regard, was entirely upheld by the Sixth Circuit Court of Appeals in this case. We attempted, unsuccessfully, to address this issue at the time of the State Level Review in 1979.

6. Based upon the record of the actions and inactions of the District and State in my behalf, and based upon my identified and assessed needs as documented in App.V(D) and App.V(E), am I entitled to redress from the District and from the State? I was never determined, by the proper authorities, to be incapable of profiting substantially from further instruction per R.C.O. 3321.05. Legally, am I not rightfully within the Kent City School District's responsibility? Do my needs dictate an extended school day to teach me self-help skills in my apartment? Do my needs dictate occupational therapy services on an ongoing basis to teach me manipulating fasteners on clothing, to take a bath and dress independent from my parents or teacher? Should this type of instruction not be provided to me in my apartment where I need to use it, based upon the opinions of Lou Brown, Alison Ford, and Anne Donnellen? Based upon the Report by Lou Brown and Alison Ford, and based upon my needs, am I entitled to programming on an extended year basis? How much should the school year be extended for me? Should I have the opportunity to residential-type programming on a twenty-four hour basis and year-round? Do I have the right to live in my apartment instead of being moved away from my environs in order to learn the skills first? Would it not be more feasible and less expensive for Kent and Ohio to provide a trained teacher with properly qualified supervision of

this trained teacher in my apartment and community where I live and plan to continue to live, since my family is here? Based upon the Brown Report, the expert testimony in my behalf, do my needs dictate comprehensive vocational education rather than pre-academics? Do I have the right to learn to live, to shop, to work, to access community life?

7. Under the federal laws, P.L.93-380 and 94-142, as well as P.L.93-112 as amended by P.L.93-516, a person must be properly evaluated and diagnosed according to procedural safeguards. How did my District implement these laws in my behalf without the required evaluations in compliance with 20 USC 1401 et seq.? How did the District implement 29 USC 794 with the amended Section 706 concerning defintions? Or their accompanying Rules and Regulations, 45 CFR 121a.532 and .534? Or, 45 CFR 84.33, 84.35, 84.36, 84.37?

8. Under these federal laws, including 20 USC 1401 et seq., how did the State of Ohio implement these procedural safeguards for me, when the case was placed at their door step in 1979? How did the State of Ohio implement 20 USC 1412 (6) in my behalf?

9. Based upon the record, is it not a fact that the District and the State joined forces against me? Am I entiled to redress under 29 USC 794?

10. Based upon the record, am I entitled to redress under 42 USC 1983?

11. Have my rights to equal protection under the law been violated by the District? (Constitution)

12. Have my rights to equal protection under the law been violated by the State of Ohio? (Constitution)

13. Have my rights to due process been violated by the District? (Constitution)

14. Have my rights to due process been violated by the State?

15. Am I entitled to redress in the form of compensatory appropriate education? Based upon the record, and the applicable law of State and Federal, how many years of compensatory education am I entitled to?

16. Are there any provisions to insure the District and State provide me with the type and degree of education I hope to receive as a result of this very difficult litigation?

Rule 15.1.(b) A list of all parties to the proceeding in the court whose judgment is sought to be reviewed, except where the caption of the case in this Court contains the names of all such parties:

Plaintiffs-Appellants, Cross-Appellees:	Thomas Matthias Rettig, handicapped citizen Eva O. Rettig as his mother
Defendant-Appellee, Cross-Appellant:	Kent City School District/ Board of Education
Defendants-Appellees:	Kenneth Cardinal and Donna Lightel, former and present superintendent of District in his/her official capacity Michael Chrin, in his official capacity as Director of Child Study and Special Education for District
Defendants-Appellees:	State Board of Education of Ohio Franklin B. Walter, in his official capacity as Superintendent of Public Instruction for the State of Ohio

Amicus Curiae on issue attorneys fees on behalf of appellants. The attorneys for the Amicus Curiae are the former counsel of Thomas M. Rettig for the Independent Hearing Officer's Hearing (14 volumes of transcripts together with Rettig Exhibits 1-67 inclusive, Board of Education Exhibits A-Z, AA-ZZ and AAA-HHH, all inclusive, and Hearing Officer Exhibits 1 and 2.)
They represented both Thomas M. Rettig and his mother in the proceedings at the District Court level.
At the conclusion of those proceedings, these attorneys were fired by the Rettigs.
They then petitioned the Court of Appeals to be permitted to argue on the issue of attorneys fees/costs incurred by the plaintiffs in the hearings below. (District Court and Adm. Hearg.) Thomas M. Rettig no longer considers these attorneys his representatives. If they were a party in the court below, they are not now a party. Thomas M. Rettig comes to this Supreme Court without an attorney. He comes by and through his mother.

Rule 15.1.(d) A reference to the official and unofficial reports of any opinions delivered in the courts or administrative agency below:

The reports of the Courts below are provided in Appendix I. They are denying the requests for intervention of different kinds. Some of the attempts made by the plaintiffs are found in App.V(C).

The reports of the administrative agency are contained in Appendix II.

Several of the attempts made by the Rettigs in behalf of Tom are found in Appendix V(B). Not included in this Appendix is the 202-page volume of objections to the Report and Recommendations of the referee appointed by Franklin Walter to review the Decison of the appointed independent hearing officer. It is contained in the administrative record.

None of the reports, orders, etc. cite the Kent City School District for not having a multi-factored evaluation as required by State and Federal laws for special education and related services. Neither do any of them cite Kent for not providing prior notice to Tom or his parents for evaluations such as the one forced upon Thomas by Michael Chrin in 1977. It is found in Appendix V(D).

Judge Aldrich knew this fact; yet she did not order an evaluation until August 25, 1981. She apparently excused Michael Chrin for evaluating all handicapped students without informing any of the parents.

The District submitted its "bastard" evaluation to Judge Aldrich. On its face it is obviously inappropriate: no mention is made to any diagnosis, nor to any medical evaluation. It is in Appendix V(C). The State of Ohio Board of Education dismissed the request of the parent to challenge the evaluation on the basis of the instruments used an on the basis of the lack of qualifications of the personnel who evaluated Tom; and those who teach Tom; and those who supervise the instruction, if that is what Tom receives from his school bosses.

Rule 15.1.(e) A concise statement of the grounds on which the jurisdiction of this Court is invoked, showing:

(i) The nature of the proceeding and, if the appeal is from a federal court, the statutory basis for federal jurisdiction.

At the regular meeting of the Kent Board of Education on February 27, 1978, Eva Rettig formally requested an Impartial Due Process Hearing at the conclusion of her formal presentation of complaints concerning the evaluation and placement of Thomas Rettig by the Kent City School District. This presentation took ninety minutes. The Board of Education of the Kent City School District took no action at that time; nor did it resolve to take some in the future. See Board Exhibit BBB; Administrative Record.

The verbal yet formal request was reduced to writing and addressed jointly to the superintendent of instruction and to the president of the Board of Education of the Kent Public Schools and is dated February 28, 1978 (same exhibit referred to above.)

> I hereby formally request again an impartial due process hearing regarding the provision of free appropriate education in the least restrictive placement of my son Thomas M. Rettig.
>
> I am dissatisfied with my son's education as it is presently provided.
>
> I respectfully request a copy of each page and of every page, note, entry, etc. of <u>all</u> school records regarding my son. I am prepared to pay for the actual cost.
>
> In view of the fact that I have been very reasonable and patient in reaching a final decision in the matter, I ask the Kent Schools to move as quickly as possible. The child is 13 years old and has needed more help from the time he was born with early infantile autism.

Eva Rettig received none of the records she requested until she hired an attorney for Thomas. The District, even then, had withheld the letter which Michael Chrin had written to Cleveland Metropolitan General Hospital requesting a diagnosis for Thomas. The District had also withheld the copy of the Application for the Legal Dismissal of Thomas Rettig from School Attendance. When Eva Rettig succeeded in searching and comparing each page constituting the morass of inappropriate "documents" in lieu of legal documents in the file kept by Michael Chrin on Thomas Rettig, those two items turned up. The Application was never signed by the then superintendent of the District, Robert Stanton. Therefore, it could not be filed with the State of Ohio as required by Board Standard EDb-215-13 promulgated and adopted by the State Board of

Education in August of 1966 and in effect until its revision by this authority in 1973. Thomas was excluded without benefit of due process of law as provided in this Standard, and the Statute. The District elected to refuse a due process hearing to Eva Rettig. Instead, the State Board of Education of Ohio appointed its Independent Hearing Officer, David Freed, to review the placement decision which had been made of Thomas Rettig, and those placement decisions affirming the original decision to withhold due process from the handicapped child. This Hearing Officer required the parents to sign a waiver of their right to a due process hearing to which they were entitled under P.L.94-142 and Ohio Revised Code Section 3323.05. He did this by ordering the attorney, whom the Rettigs were forced to engage before any semblance of "due process" would be provided for the child, to prepare a waiver for them to sign which waiver had the effect of stripping not only the parents of their guaranteed right to a due process hearing, but stripping the handicapped child of his right to a free appropriate public education as well. As "independent hearing officer" he obviously placed his decision as flying in the face of the specific requirements concerning eligibility for related services based upon a legal evaluation of this human being and his placement by the District based upon this legally required evaluation before teaching is to begin. He independently and arbitrarily decided that the Special Education Standards adopted and/or revised by the State Board of Education were not promulgated under Section 3323.011 of the Revised Code of Ohio. This "wisdom" permitted David Freed to conclude that no diagnosis was required as a basis. He also, in this arbitrary fashion, decided that no prior notice need be served upon the Rettigs at those times where Michael Chrin personally administers individual psychological tests and then writes an evaluation and classification on each child which evaluation he places into the file of each child, and which he also submits to the State Department of Education. With these strokes of genius, David Freed effectively did away with the due process rights of handicapped children and their parents, including Thomas M. Rettig and his parents.

Eva Rettig appealed to the Ohio State Board of Education which is ultimately responsible for the education of the child.

Franklin Walter, the State Superintendent for Public Education of Ohio, appointed Referee Clark to provide an independent review of the procedures employed by State-appointed Independent Hearing Officer Freed. He upheld Freed in each and every respect and refused to convene an appropriate hearing accoording to Chapter 119 of the Administrative Code of Ohio whereby the missing documents and required policies and procedures concerning the implementation of the present State Statute relative to special education could have been compelled of the District.

Objections to the Report and Recommendations of Clark were filed by the Rettigs. The State Board of Education instructed Franklin Walter to prepare a report of the 121-page document submitted by the Rettigs.

Franklin Walter advised the State Board that the State Board was not required to go beyond the stipulated issues which were arrived at without Eva Rettig due to the waiver she had to sign for Freed. He did not point out for the State Board that the mother objected to both Freed and Clark because they held that no diagnosis was necessary for the child to determine eligibility for, and placement into appropriate services based upon the required evaluation. The parents should be provided prior notice before any kind of evaluation activities were to be carried out on Thomas Rettig, was another objection raised. There were numerous instances cited of specific violations of procedural rights of Thomas by his District. However, no due process hearing, meeting the requirements of 20 USC 1415.(2)(d) was provided to the Rettigs, neither locally nor at the State level review. This is also a violation of the Revised Code of Ohio, Section 3323.05 and the Standard promulgated underneath this State Statute, EDb-215-17 (now codified at 3301-51-16 Administrative Code of Ohio).

Eva Rettig appeared before the Ohio State Board of Education, as did Kenneth Cardinal, the Kent superintendent. The Ohio State Board of Education adopted a resolution which essentially contradicted itself: it both affirmed Freed and Clark, and Walter,

while "offering assistance to the District" to develop an individualized education plan for Thomas. The State Board did not set any time lines, nor did it provide the procedures which the State administration was to employ in the implementation of this "mandate."

While the Rettigs actively pursued the offer, they filed their original complaint on November 30, 1979 against the Kent City School District. When it became more and more apparent that no due process and procedural safeguards were going to be afforded to the Rettigs, they amended their complaint, on December 13, 1979, and naming four new defendants, including the State Board of Education, they invoked the federal Courts' jurisdiction under the Fourteenth Amendment to the United States Constitution and the Civil Rights Act of 1871, 42 U.S.C. 1981 and 1983. The initial complaint invoked federal jurisdiction under 20 USC 1415.(2) which provides for a judicial review of the the administrative layer of hearing and state level review. Original jurisdiction is conferred by this Statute, without regard to the amount in controversy, upon the District Courts of the United States. (20 USC 1415 (e)(4). 539 F.Supp.768 (1981) RETTIG v. KENT CITY SCHOOL DISTRICT

(p. 772): "Court has limited this action to a review of the issues raised by agreement of the parties to the administrative hearing and the additional claims of unconstitutional denials of due process and equal protection, together with claims of State violations of the EHA. Specifically, those issues are:

I. Plaintiffs' allegation that the refusal to permit Thomas Rettig to enroll in the Kent City School District in 1971 violated his rights under the due process and equal protection clauses of the United States Constitution.

II. Plaintiffs' allegation that defendants failed to provide a free and appropriate education for Thomas Rettig, in violation of the EHA:

A. The failure to provide Thomas Rettig with a twelve-month program of special education and related services;
B. The failure to provide in-service training on effective methods of teaching autistic children;
C. The failure to provide a multi-factored evaluation of Thomas Rettig;
D. The failure to provide nonacademic and extracurricular services and activities in such a manner as to afford Thomas Rettig an equal opportunity for participation in such services and activities;
E. The failure to provide occupational therapy services to Thomas Rettig.

III. Plaintiff's allegation that the State Board of Education failed to monitor and assure compliance with the law by the special education programs offered to Thomas Rettig by the Kent City School District.

IV. Plaintiffs' allegation that the State standards relating to the issuance of final orders in an administrative appeal violate the EHA on their face and in their application.

The District Court apparently abused its discretion when it denied Plaintiffs' request for a multi-factored evaluation at the time of the TRO hearing concerning summer school for Thomas Rettig. The Sixth Circuit upheld.

The District Court apparently abused its discretion when it denied Plaintiffs' request to amend their complaint to include the two school years that had lapsed since the state level review; school years 1979-80 and 80-81. She required exhaustion of administrative remedies under 20 USC 1415.(e). However, the District Court did not afford the plaintiffs their right under 20 USC 1415.(e)(2) which provides:

> ....In any action brought under this paragraph the court shall receive the records of the administrative proceedings shall hear additional evidence at the request of a party, and, basing its decision on the preponderance of the evidence, shall grant such relief as the court determines is appropriate.

The District Court permitted only supplemental testimony regarding issue I concerning the unconstitutional and illegal exclusion. She did not provide an opportunity to present the evidence by the plaintiffs concerning school years 79-80 and 80-81.

Furthermore, she abused her discretion when she apparently did not base her decision on the overwhelming documentation concerning the identified needs of Thomas Rettig as contained in the administrative record which she received, and in the testimony and exhibits accumulated in her Court at the times of the TRO hearing, and at the trial on the merits. No substance resulted for Thomas Rettig. She did not provide any opinion on the basis of Section 504 of P.L.93-112, nor on any other federal and state statutes, nor under the Constitution to afford relief for Thomas Rettig. None of these require exhaustion of administrative remedies; do they? The Sixth Circuit Court upheld the District Court in nearly all respects. It afforded no tangible relief to Thomas Rettig whatsoever. The intangible relief is his right to appeal to the Supreme Court for a vindication of his right to due process and procedural safeguards in the provision of his free appropriate public education. He needs the substance provided and compensated.

In addition to invoking the appellate jurisdiction of the Supreme Court under the Statutes cited above, and under the Fourteenth Amendment's guarantees to due process remediable under 42 U.S.C. 1981 and 1983, Thomas Rettig further invokes the appellate jurisdiction of the Supreme Court under 28 USC 1254 (2) which provides:

> Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:
>
> (2) By appeal by a party relying on a State Statute held by a Court of Appeals to be invalid as repugnant to the Constitution, treaties or laws of the United States, but such appeal shall preclude review by writ of certiorari at the instance of such appellant, and the review on appeal shall be restricted to the Federal questions presented.

The right of Thomas Rettig to equal protection of his right to free appropriate public education is primary and basically arises under the Ohio statutes themselves. Those are the compulsory attendance laws and laws for special education enacted by the Ohio General Assembly and in effect during the time this law suit embraces: Chapter 3321. Ohio Revised Code; and chapter 3313 concerning free schooling for resident children who are within the compulsory attendance laws together with chapter 3323. special education and related services for handicapped children who are within the compulsory attendance laws.

The right of Thomas Rettig to due process in the classification procedures for the determination of the education he is to receive, arises under the Standards or regulations adopted under these statutes.

While the statutes, as in effect in 1973, were upheld on their facial constitutionality in 1976 in Cuyahoga County Ass'n for Retarded Children, etc. v. Essex, 411 F.Supp.46 (1976) by the three-judge panel, the standards or regulations promulgated under them, were found in violation of the Fourteenth Amendment. The grounds were cited as deficient in not containing proper provisions regarding notice, opportunity for review of material on which proposed action thereunder was to be taken, opportunity for input by persons affected, and guarantees that relevant material would be before person charged with responsibility for final decision must be supplemented to afford minimum due process rights. (page 48; paragraph 15.)

The District Court dealt with the CARC suit; and the Sixth Circuit found her opinion not clearly erroenous. A copy of 411 F.Supp. 46 (1976) is provided in Appendix V(A). The Court in that suit held that, children, who had not been excluded according to the provisions of the Statute itself, Revised Code of Ohio 3323.05, were entitled to the same opportunities as all children of school age in Ohio are entitled concerning the expenditure of state and local funds for programs, facilities, and qualified teachers supervised by qualified and certified teachers. The Court said it was not the level of I.Q. that determined whether or not a child had the right to be educated in school buildings with his age peers - albeit in a special class, of course - rather it was the legal determination that the child was incapable to learn from special education in classes for which the Ohio General Assembly kept appropriating funds to be used by local school districts in conjunction with the funds locally provided for by the taxpayers. This Court is respectfully requested to review the record to enable it to intervene in behalf of Thomas Rettig with an appropriate Order for compensatory education upon the local and state education agencies.

Thomas Rettig has never been so determined by law.

Rule 15.1.(e).(ii)

Date of entry of judgment: Filed November 8, 1983

Motion for Rehearing denied: Filed January 3, 1984.

Motion for Reconsideration denied: Filed February 7, 1984.

Notice of Appeal: Filed February 29, 1984 and received by

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT: March 5,1984

Rule 15.1.(e).(iii) The statutory provision believed to confer jurisdiction of the appeal on this Court, and, if deemed necessary, the cases believed to sustain jurisdiction.

28 U.S.C. 1254 (2):

> "Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:
>
> (2) By appeal by a party relying on a State statute held by a court of appeals to be invalid as repugnant to the Constitution, treaties or laws of the United States, but such appeal shall preclude review by writ of certiorari at the instance of such appellant, and the review on appeal shall be restricted to the Federal questions presented."

Cuyahoga County Association for Retarded Children, etc. v. Essex. United States District Court, N.D. Ohio, E.D. 411 F.Supp.46 (1976)

Thomas M. Rettig, et al. v. Kent City School District. United States District Court, N.D. Ohio, E.D. 539 F.Supp.768 (1981) upheld by Sixth Circuit Court of Appeals, November 8, 1983.

Rule 15.1.(f). The constitutional provisions, treaties, statutes, ordinances, and regulations that the case involves. Their citations are listed here; their verbatim text is contained in the Appendix (v).

Amendment V to the U.S. Constitution

Amendment XIV to the U.S. Constitution

42 U.S.C.A. 1983, 1988

29 U.S.C. 794 as amended by P.L. 93-516 in 1974

88 STAT 582 (amendment to P.L. 91-230 of 1970)

20 U.S.C. 821 (P.L. 93-380 of 1974), 88 STAT. 484

20 U.S.C. 1401 (P.L. 94-142 of 1975);1401 et seq.

PART 84 -- Rules and Regulations implementing Section 504 as amd.
45 C.F.R. Federal Register, Vol. 42, NO.86, p.22676

PART 121a -- Rules and Regulations to implement Assistance to States for the Education of Handicapped Children
45 C.F.R. Federal Register, Vol. 42, NO.163, p.42474

REVISED CODE OF OHIO, chapters 3321. and 3323.

STANDARDS of the Ohio State Board of Education: 1966, 1973, 1976, 1977.

Rule 15.1.(g) A concise statement of the case containing the facts material to consideration of the questions presented

Judge Aldrich set out the facts of the case. She made some errors which are pointed out by Eva Rettig in her Brief to the Sixth Circuit.

539 F.Supp. 768(1981) RETTIG v. KENT CITY SCHOOL DISTRICT is found in Appendix (I). As is also the Opinion filed by the Sixth Circuit. The Brief of Eva Rettig which sought to correct these errors in fact because they were not supported by the record, is found in Appendix V(C).

I. Period 1970 to "admission" in 1974 Facts

Under the provisions of R.C.O. 3323.01, the District received funds from the State of Ohio for special education units to serve children of the age of five or older who had been identified as handicapped. Michael Chrin was the Director of Child Study and Special Education for the District in this time period.

R.C.O. 3323.01 is found in Appendix V(A) p.21.

Standard EDb-215-07, 09 are found on pages 26 - 30.

In 1970, Michael Chrin identified Tom Rettig handicapped. He himself evaluated the child. EDb-215-07(A)(6) on p.28. EDb-215-09(A)(2) on p. 27; 09(A)(4)(a) on p. 27.

He did not assign Tom to another psychologist. He did not assign Tom to the class for slow learning children. 07(A)(6).

The Kent City School District had no report prepared to justify its decision to refuse admission of Tom Rettig in 1970.

In 1971, under the provisions of R.C.O. 3321., Tom had become amenible to the compulsory attendance laws of the State of Ohio. School Psychologist Irvin prepared a report of her evaluation of Tom. R.C.O. 3321. in Appendix V(A)p.19; 09(A)(2)(b) and (5)(e,f); her report is located in Appendix V(D).

This school psychologist prepared the E-1 form. Michael Chrin had the responsibility to assign Tom to an appropriate special education unit. R.C.O. 3321.05. 07(A)(6); 07(B)(2);09(A)(5)(e)(f); Edb-215-13.

Michael Chrin did not assign Tom Rettig to any other psychologist in 1971. 07(A)(6) p. 28; 07(B) p.28.

The E-1 Form required for legal dismissal was never signed

by any local school official. Yet Tom was refused admission. Michael Chrin did not assign Tom to a class for slow learning children. 07; 13.

In May 1972, Michael Chrin wrote to Cleve Metro Gen Hosp. This proves that he had first hand knowledge of the fact that the parents wanted their son enrolled in the special class. Appendix V(D). Yet Tom spent the year in an inappropriate nursery school in Akron, which required the mother to drive there and to stay for the two hours or less that Tom was there. Edb-215-13; 07; R.C.O. 3321.07 on requirements for child not in public school.

In May 1972, Michael Chrin requested medical evaluation to be done on Tom by the Cleve Metro Gen Hosp. Appendix V(D). The evidence shows that the child's father gave his permission to the hospital for the release of the diagnosis to the Kent School Psychologist. The evidence shows that the information was sent. On the stand, Mr. Chrin testified he never received it. But the father testified after Chrin that the two did indeed discuss the evaluation; Chrin never said anything further on the subject. The evaluation is located in Appendix V(D).

The dual diagnosis required that both aspects be addressed in the education of Tom Rettig. Tom was in a private special education school without any contact to non-handicapped peers for the school year 1972-73; as well as for the better part of school year 73-74. The private school teacher tied Tom to a fire extinguisher mounted outside the classroom because of his hyperactivity and other inappropriate behaviors which she was not equipped to handle. Tom was again hospitalized in January 1974. The results are found in Appendix V(D).

The parents did not see any of the two evaluations done on their son until after they had applied to Michael Chrin, again, to have Tom enrolled. Their letter of application provides the type of placement Tom needed at the time based upon the second hospitalization: residential placement for behavior modification. The Director of Child Study and Special Education did not provide for any evaluation of Tom at the time of placement. He placed Tom into a class under EDb-215-04. Appendix V (A) pp.33-37. See EDb-215-04 (B)(C)(D).; EDb-215-06; Appendix V(A) pp. 7-14.

It was the pre-placement multi-factored evaluation which is required under EDb-215-04 that was not performed on Tom, and that was not required, according to Independent Hearing Officer Freed. See Hearing Officer's Decision, pp. 16 ff. in Appendix II. Upheld by Referee Clark on p. 10 in Appendix II; and ultimately upheld by the Ohio SBOE; 88 STAT. 582 in Appendix V(A) p.3; 20 USC 1401 (17) in Appendix V(A) p.4; 20 USC 1412 Sec. 612 (6) on p. 5; 20 USC 1414 (a)(5) p.6; 20 USC 1414(b) p. 6; 20 USC 1415 p. 7; 45CFR 84. on pp. 8-10; 45 CFR 121a. on pp. 11 - 18; Revised Code of Ohio 3321. on pp. 19 and 20; Revised Code of Ohio 3323. on pp.21 - 25; State Board of Education Program Standards, 1966 on pp. 26 - 32; Ohio RevisedCode 3323.011 on pp. 33 - 42; State Board of Education Standards for Due Process and Procedural Safeguards for Handicapped Children and Youth effective August 28, 1976 on pp. 43 - 44; Standards for Identification, Standards for Multi-factored Evaluation, Least Restrictive Placement and Individualized Educational Plan, Standards for Related Services on pp. 45 - 49. See also Appendix V(D) concerning the file on Thomas Rettig in conjunction with the Statutes and Standards and Rules and Reg's. The Kent School District's SOP 04 IEPPs are not included in the Appendix of Tom Rettig. They were found inappropriate by the experts that testified in his behalf. The parent requests for programming are not included either; they were not included in the IEPPs anyway.

See further Appendix V(E) for the definition of the syndrome of autism; and for the independent educational evaluation of those IEPPs and other "documents." The qualifications of the two professors who prepared the report are also provided in Appendix V(E)

Rule 15.1.(h) A statement of the reasons why the questions presented are so substantial as to require plenary consideration, with briefs on the merits and oral argument, for their resolution.

It is the belief of the student that enough has been argued, said, and written. He has derived no benefit yet. The record shows that no multi-factored assessment procedure was administered to the child at any time in compliance with the requirements of the school laws. There are no properly qualified teachers to teach by State Standards; the student was removed to a ghetto for handicapped children and housed on the campus of Kent State University entirely separate from the buildings owned by the Kent Board of Education. The record shows that the KentCity School District provides no notice to parents prior to subjecting all handicapped students to a "group assessment" for classification purposes. The record contains not one copy of any required prepared report from the placement and review committee to review any kind of evaluation of this human being, according to Standard EDb-215-17, or 3301-51-16, or 3301-51-18. Neither does the superintendent require one to be written; he testified so. There is no protection in evaluation procedures. Parents are not permitted to challenge these actions. Parents must hire an attorney in order to have any type of hearing. The attorney decides upon the exhibits and upon the questions that will constitute the record. On paper, the State of Ohio requires compliance with the laws and its standards. In the case of this human being, however, the State of Ohio chose to aid and abett Kent instead of requiring compliance of the District with the State Standards concerning due process and procedural rights in the realm of eligibility for services, evaluation of needs, placement based upon those needs with the necessary services, and compliance with the mandated re-evaluation.

The Statutes and their regs and Standards are provided for the convenience of the Court in Appendix V(A). If the Court needs more information than that provided, would it please so indicate.

Rule 15.1.(i) If the appeal is from a decree of a district court granting or denying a preliminary injunction, a showing of the matters in which it is contended that the Court has abused its discretion by such action.

Judge Aldrich refused the request for preliminary injunction of July 24, 1980. She chose to keep our plea for court intervention entirely separate from the case on the merits which was very old and very cold when it reached her in 1981. Two years had gone by and the District had chosen to restrict the contacts with non-handicapped peers in the school setting when compared with what was testified to at the hearing by teachers and others. She apparently ignored the child;how could she have done nothing for him in light of the comprehensive evaluation report submitted to her? It is found in Appendix V(E).

She turned town our pleading for help in the implementation of her Order because of lack of jurisdiction over the case. The parents filed a new suit under Section 504 against the teacher and the district; she dismissed it for lack of exhaustion of administrative remedies. These plaintiffs have not found the location in the Statute, nor in the rules and regulations, that make that requirement. The pleading is found in Appendix V(C).

On the Appellate Court level, the parents sought to correct the factual mistakes the District Court had made. It upheld all of the mistakes. The Rettig Brief to the Sixth Circuit was written by Eva Rettig; it is located in Appendix V(C).

Further, the Rettigs challenged the the right of the Kent City School District to appeal an issue to the Sixth Circuit under 20 USC 1415 when this Statute is specifically intended for a party aggrieved by the State Board of Education Final Order. Not only did the Court hear their appeal; it remanded the issue back to Cleveland where more time was taken. No Court has helped Thomas Rettig yet. Will the Supreme Court help him?
Judge Aldrich, on remand, upheld her earlier ruling on the issue of equal opportunity for extra-curricular activities for Tom. The District appealed again; the Rettigs cross-appealed because they believe that they have a right to redress under Section 504 and other Statutes. Now the District has filed a Motion to have the Cross-Appeal dismissed. It is big game to these defendants.

This Jurisdictional Statement and accompanying Appendices are being submitted to this Honorable Court with the fervent prayer that Thomas will receive compensatory education as this Court deems just and fair.

Respectfully submitted,

Eva Rettig

(Mrs.) Eva Rettig
586 Francis Street
Kent, Ohio 44240

(216) 678-0988

FOR THOMAS RETTIG

RULE 15.1. (1) IF THE APPEAL IS FROM A DECREE OF A DISTRICT COURT GRANTING OR DENYING A PRELIMINARY INJUNCTION, A SHOWING OF THE MATTERS IN WHICH IT IS CONTENDED THAT THE COURT HAS ABUSED ITS DISCRETION BY SUCH ACTION...

III 1 11/29

FILED

United States Court of Appeals

FOR THE SIXTH CIRCUIT

FILED
1984 FEB 22 AM 11:10
CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF OHIO
CLEVELAND

NOV 8 1983
JOHN P. HEHMAN, Clerk

No. 81-3586/81-3595

THOMAS M. RETTIG, ET AL.,

Platinffs-Appellants,
Cross-Appellees,

v.

KENT CITY SCHOOL DISTRICT,

Defendant-Appellee,
Cross-Appellant,

KENNETH CARDINAL, ET AL.,

Defendants-Appellees.

Before: LIVELY, Chief Circuit Judge; KRUPANSKY, Circuit Judge; and FEIKENS, District Judge.

J U D G M E N T

ON APPEAL from the United States District Court for the Northern District of Ohio.

THIS CAUSE came on to be heard on the record from the said District Court and was argued by counsel.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this court that the judgment of the said District Court in this case be and the same is hereby affirmed in part, vacated in part and remanded to the district court not inconsistent with the opinion of this Court.

No costs taxed. Each party will bear his own costs on this appeal.

I hereby certify that this instrument is a true and correct copy of the original on file in my office.

Attest: James S. Gallas, Clerk
U. S. District Court
Northern District of Ohio

By: Linda J Paynter
Deputy Clerk

ENTERED BY ORDER OF THE COURT

John P. Hehman, Clerk

John P. Hehman
Clerk

Issued as Mandate: February 15, 1984

A True Copy.

COSTS: None

Filing fee.....$
Printing.....$

Total.....$

Attest:

Mary Lou Petty
Deputy Clerk

R. R.

6CA-80
11/82

III 2

FILED

JAN 3 1984

JOHN P. HEHMAN, Clerk

Nos. 81-3586, 81-3595

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

THOMAS M. RETTIG, et al.,

Plaintiffs-Appellants,
Cross-Appellees,

v.

KENT CITY SCHOOL DISTRICT,

Defendant-Appellee,
Cross-Appellant,

and

KENNETH CARDINAL, et al.,

Defendants-Appellees.

ORDER

BEFORE: LIVELY, Chief Circuit Judge; KRUPANSKY, Circuit Judge; and FEIKENS, District Judge*

Upon due consideration, the Court concludes that rehearing in this matter is not warranted and, accordingly, the appellants' motion is hereby denied.

ENTERED BY ORDER OF THE COURT

John P. Hehman
Clerk

*Hon. John Feikens, United States District Judge for the Eastern District of Michigan, sitting by designation.

FILED III 3

FEB 7 1984

JOHN P. HEHMAN, Clerk

Nos. 81-3586, 81-3595

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

THOMAS M. RETTIG, et al.,	)	
	)	
Plaintiffs-Appellants, Cross-Appellees,	)	
	)	
v.	)	**ORDER**
	)	
KENT CITY SCHOOL DISTRICT,	)	
	)	
Defendant-Appellee, Cross-Appellant,	)	
	)	
and	)	
	)	
KENNETH CARDINAL, et al.,	)	
	)	
Defendants-Appellees.	)	

BEFORE: LIVELY, Chief Circuit Judge; KRUPANSKY, Circuit Judge; and FEIKENS, District Judge*

Appellant's motion for reconsideration of the Court's order denying rehearing is hereby denied.

ENTERED BY ORDER OF THE COURT

John P Hehman, /ds
CLERK

*Hon. John Feikens, Chief Judge, United States District Court for the Eastern District of Michigan, sitting by designation and assignment.

III 4

FILED

1984 JAN 26 PM 2:31

CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF OHIO

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

THOMAS M. RETTIG, et al.	)	Civil Action No. C79-2234
Plaintiffs	)	
vs.	)	MEMORANDUM AND ORDER
KENT CITY SCHOOL DISTRICT, et al.	)	
Defendants	)	

ALDRICH, J.

This matter came before the Court for judicial review of administrative hearings held by the State of Ohio concerning the education of Thomas M. Rettig, a handicapped child, as authorized by provisions of the Education for All Handicapped Children Act of 1975 ("Act"), 20 U.S.C. §1401 et seq. After a trial to the bench, the Court issued an Opinion and Order on August 25, 1981, in which it ordered the Kent City School District ("District") to make certain changes in its Individualized Education Program ("IEP") for Rettig for the 1981-82 academic year. The complicated and unhappy history of this dispute is set forth in that opinion. Rettig v. Kent City School District, 539 F.Supp. 768 (N.D. Ohio 1981).

Both parties appealed to the United States Court of Appeals for the Sixth Circuit. Affirming this Court on all other issues, the three-judge panel remanded for further consideration only the question of whether the Court's order that the District provide Rettig with at least one hour of

extracurricular activities per week remained appropriate in light of Board of Education of the Hendrick Hudson Central School District v. Rowley, ___ U.S. ___, 102 S.Ct. 3034 (1982). See Rettig v. Kent City School District, ___ F.2d ___ (6th Cir. Nov. 8, 1983).

Upon consideration, the Court finds that the relief granted in its original opinion comports with the standards set forth in Rowley. In addition, the Court finds that any alteration of the relief provided in the Opinion would be improper, since the Court's decision concerned a subject matter — the 1981-82 IEP — which is now moot.

I. ROWLEY ANALYSIS

The Court's order that the District provide Rettig with extracurricular activities rested on a regulation promulgated by the Department of Health and Human Services pursuant to the Act. Title 34 U.S.C. §300.306[1] provides:

> (a) Each public agency shall take steps to provide nonacademic and extracurricular services and activities in such manner as is necessary for participation in those services and activities.

The Court found that

> . . .the education that Tom received between 1976 and 1979 was primarily a classroom experience. In conjunction with the classroom experience, the Kent City School District did not provide any after school activities in which a child like Thomas Rettig might participate, although the School District did provide such activities for its non-handicapped students. It

[1] At the time of the Court's opinion, the same regulation was codified at 45 C.F.R. §121a.306.

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therefore failed to provide after school activities on an equal basis, and has been in violation of [the regulation].

539 F.Supp. at 780.

Neither the regulation nor this Court's interpretation of it violate the letter or spirit of Rowley. Reversing a district court order requiring that a school district provide a sign-language interpreter for a deaf student, Amy Rowley, the Supreme Court rejected her

> . . .contan[tion] that "the goal of the Act is to provide each handicapped child with an equal educational opportunity." . . .[T]he requirement that a State provide specialized educational services to handicapped children generates no additional requirement that the services so provided be sufficient to maximize each child's potential "commensurate with the opportunity provided other children." . . .Congress sought "to provide assistance to the States in carrying out their responsibilities under . . . the Constitution of the United States to provide equal protection of the laws." . . . But we do not think that such statements imply a congressional intent to achieve strict equality of opportunity or services.
>
> . . .The requirement that States provide "equal" educational opportunities would thus seem to present an entirely unworkable standard requiring impossible measurements and comparisons. Similarly, furnishing handicapped children with only such services as are available to nonhandicapped children would in all probability fall short of the statutory requirement of "free appropriate public education"; to require, on the other hand, the furnishing of every special service necessary to maximize each handicapped child's potential is, we think, further than Congress intended to go. Thus to speak in terms of "equal" services in one instance gives less than what is required by the Act and in another instance more. The theme of the Act is "free appropriate public education," a phrase which is too complex to be captured by the word "equal" whether one is speaking of opportunities or services.

103 S.Ct. at 3046-47 (citations omitted).

The Court concluded:

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> . . .[T]he District Court found that the "evidence firmly establishes that Amy is receiving an 'adequate' education . . ." In light of this finding, and of the fact that Amy was receiving personalized instruction and related services calculated by the . . . school administrators to meet her eductional needs, the lower courts should not have concluded that the Act requires the provision of a sign-language interpreter.

Id. at 3052.

This Court's order concerning Rettig's extra-curricular activities does not violate Rowley. We did not read the requirement of 34 C.F.R. §300.306(a) that the District "afford handicapped children an equal opportunity for participation" to mandate the "strict equality of opportunity or services" eschewed by Rowley. Rather, this Court sought to rectify a situation in which the District had failed to "provide any after school activities in which a child like Thomas Rettig might participate . . ." Ordering the District to provide Rettig with at least one hour per week of extracurricular activities did not seek to force it to provide services "sufficient to maximize [Rettig's] potential "commensurate with the opportunity provided other children.'" 102 S.Ct. at 3046. The order simply sought to provide him with the "free appropriate public education" that is indisputably the subject matter of the Act. Id. at 3047.

This Court therefore determines that its order concerning Rettig's extracurricular activities was appropriate under the Act, the regulation, and Rowley.

II. MOOTNESS

Under Article III of the Constitution, this Court sits to decide "Cases" and "Controversies" and may not issue advisory opinions on abstract questions. The doctrine of "mootness", which prevents courts from hearing actions that no longer present a justiciable issue, has two aspects: "when the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome." Powell v. McCormack, 395 U.S. 486, 496 (1969); see generally United States Parole Commission v. Geraghty, 445 U.S. 388, 396 (1980); DeFunis v. Odegaard, 416 U.S. 312 (1974).

This matter came before the Court for judicial review of administrative hearings concerning Rettig's IEP for the 1981-82 academic year. The controversy over that plan cannot be considered a "live" one. Indeed, to amend at this time the IEP for a school year long since concluded would be, as it were, the very essence of mootness.[2]

The Clerk is instructed to close the file to No. C79-2234.

IT IS SO ORDERED.

ANN ALDRICH
UNITED STATES DISTRICT JUDGE

[2]Rettig recently commenced a new action against the District challenging the education it has provided him in the school years since 1981-82. See Rettig v. Kent City School District, No. C83-2881 (N.D. Ohio filed July 15, 1983) (Lambros, J.).

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RECEIVED
MAR 5 1984
JOHN P. HEHMAN, Clerk

83-6494

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

THOMAS M. RETTIG,
EVA O. RETTIG
Plaintiffs-Appellants
-vs-

KENT CITY SCHOOL DISTRICT
KENNETH CARDINAL/DONNA G. LIGHTEL
MICHAEL CHRIN
STATE BOARD OF EDUCATION OF OHIO
FRANKLIN B. WALTER
Defendants

CITATION #81-3586
#81-3595
District Court Docket # C79-2234

NOTICE OF APPEAL

Notice is hereby given that Thomas M. Rettig hereby appeals to the United States Supreme Court the Order entered on February 7, 1984 by the United States Court of Appeals for the Sixth Circuit:

APPELLANT'S MOTION FOR RECONSIDERATION OF THE COURT'S ORDER DENYING REHEARING IS HEREBY DENIED.

His appeal includes the following statutes: The Rehabilitation Act of 1973; The Civil Rights Act of 1871 (42 U.S.C. 1983); 28 U.S.C. 2201, 2202; 28 U.S.C. 1331; 28 U.S.C. 1343 (3); 28 U.S.C. 1652; The Education of the Handicapped Amendments of 1974 (P.L.93-380); The Education of All Handicapped Children Act of 1975 (P.L.94-142).

Eva O. Rettig

EVA O. RETTIG
586 Francis Street
Kent, Ohio 44240
(216) 678-0988

FOR PLAINTIFF-APPELLANT

AFFIDAVIT OF SERVICE: I, Eva O. Rettig, having first been duly sworn, say: All parties required to be served have been served as follows: A copy of the above Notice of Appeal was served upon Dennis Whalen, 135 Portage Trail, P.O.Box 8, Cuyahoga Falls, OH 44422; and upon Gary Brown, Asst. Atty.Gen., State Office Tower, 30 East Broad St., Columbus, OH 43215; and upon Clerk, U.S. District Court, ND-ED, Cleveland, OH 44114 by placing same in the regular U.S. Mail Service, postage prepaid, this 29th day of February 1984.

Eva O. Rettig
EVA O. RETTIG

Rebecca S. Jolliff
NOTARY PUBLIC REBECCA S. JOLLIFF
Notary Public, State of Ohio
My Commission Expires April 8, 1987

Date: February 29, 1984

IN THE UNITED STATES SUPREME COURT

ORIGINAL 83-6494

THOMAS M. RETTIG,

Plaintiff-Appellant

-vs-

KENT CITY SCHOOL DISTRICT, et al.

Defendants-Appellees

CASE NO. _____

MOTION FOR LEAVE TO APPEAL IN FORMA PAUPERIS

RECEIVED
MAR 29 1984
OFFICE OF THE CLERK
SUPREME COURT, U.S.

Thomas M. Rettig respectfully requests permission of this Honorable Court to proceed on appeal in forma pauperis. He did not petition any lower courts.

Thomas M. Rettig is enrolled a handicapped student in the Kent City School District in Kent, Ohio.

On May 30, 1983, he reached the age of eighteen years. Since that time, he has been receiving support and maintenance not only from his parents, but also from the federal government in the form of supplemental security income.

Thomas was born with infantile autism, a severe childhood disorder. A Fact Sheet on Autism, published by the National Institute of Neurological and Communicative Disorders and Stroke, is attached to this Motion for the convenience of the Court. Because the kind of "education" he has been receiving from his District and State, Thomas is not now employable. Therefore, his income is very low.

In support of this Motion, Thomas M. Rettig attaches an Affidavit hereto.

Respectfully submitted,

Eva Rettig

EVA O. RETTIG
586 Francis St.
Kent, OH 44240
(216) 678-0988

For her son Thomas M. Rettig

AFFIDAVIT OF SERVICE: A copy of the above Motion and the attached Affidavit was served upon Dennis Whalen, 135 Portage Trail, P.O. Box 8, Cuyahoga Falls, Ohio 44222; and upon Gary Brown, Asst. Atty General, State Office Tower, 30 E. Broad St., Columbus, OH 43215 by placing same in the regular U.S. Mail, postage prepaid, this 29th day of March 1984.

Eva O. Rettig
EVA O. RETTIG

SWORN TO AND SUBSCRIBED BEFORE ME THIS 29
DAY OF March 19 84

_____ Commission Expires

RECEIVED
MAR 29 1984
OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE UNITED STATES SUPREME COURT

83 6494

THOMAS M. RETTIG,
Plaintiff-Appellant
-vs-
KENT CITY SCHOOL DISTRICT, et al.
Defendants-Appellees

CASE NO. _____

AFFIDAVIT IN SUPPORT OF MOTION TO PROCEED ON APPEAL IN FORMA PAUPERIS

I, Thomas M. Rettig being first duly sworn, depose and say that I am the Petitioner in the above entitled case; that in support of my motion to proceed on appeal without being required to prepay fees, costs or give security therefor, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefor; that I believe I am entitled to redress; and that the issues which I desire to present on appeal are contained in the jurisdictional statement being filed together with this Affidavit and my Motion for Leave to Proceed on Appeal in Forma Pauperis.

1. Are you presently employed?

b. No. In the summer of 1982, I was employed through CETA and earned approximately two hundred dollars per month.

2. Have you received within the past twelve months any income from any business, profession or other form of self-employment, or in the form of rent payments, interest, dividends, or other source?

Yes. I rent an apartment to learn independent living skills because my school district refuses to provide these opportunities for me. The Social Security Administration deems that my parents provide me support and maintenance valued at approximately one hundred twenty-four dollars and sixty-six cents per month for the last ten months. Together with my sister's, my name is on a Certificate of Deposit. The interest on it, for purposes of SSI, is considered mine alone in the amount of about twenty dollars per month. In reality, my sister and I share it half and half. From the State of Ohio Department of Taxation, I received a voucher in the amount of one hundred twenty-five dollars to help pay the heat bills for my apartment.

3. Do you own any cash or checking or savings account?

Yes. I have a savings account at the Kent Credit Union.

The balance is twenty-four dollars and ten cents as of Jan. 30, 1984. I have some cash on hand from my SSI checks to pay for my lunch at school.

4. Do you own any real estate, stocks, bonds, notes, automobiles or other valuable property (excluding ordinary household furnishings and clothing)?

   No.

5. List the persons who are dependent upon you for support and state your relationship to those persons.

   Nobody.

I understand that a false statement or answer to any questions in this affidavit will subject me to penalties for perjury.

Thomas M. Rettig

THOMAS M. RETTIG

SUBSCRIBED AND SWORN TO before me this 29 day of March, 1984.

Let the applicant proceed without prepayment of costs or fees or the necessity of giving security therefor.

Edward H. Faichtl

Notary Public, D.C.
My Commission Expires
August 14, 1987